STATE OF MICHIGAN

COURT OF APPEALS

SANDRA MARIA SANCHEZ,

Plaintiff-Appellant,

v

BRIAN VANSEN,

Defendant-Appellee.

UNPUBLISHED
July 24, 1998

No. 197882
Wayne Circuit Court
LC No. 94-424499-NO

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant in this civil rights case brought under 42 USC 1983. We affirm.

Plaintiff argues that no probable cause existed to support her arrest, imprisonment, incarceration or prosecution and, therefore, that the trial court erred in granting defendant's motion for summary disposition. We disagree. We review a trial court's decision to grant summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1996).

Federal law, 42 USC 1983, provides a remedy against any person who, under color of state law or custom having the force of law, deprives another of rights protected by the constitution or laws of the United States. *Payton v Detroit*, 211 Mich App 375, 398; 536 NW2d 233 (1995). However, a plaintiff may not recover for a violation of her civil rights arising out of an arrest if probable cause to arrest is established. *Tope v Howe*, 179 Mich App 91, 107; 445 NW2d 452 (1989). Probable cause exists where a person of reasonable prudence and caution would believe that the person arrested had committed a felony. *People v Holbrook*, 154 Mich App 508, 511; 397 NW2d 832 (1986). "Probable cause" is not a finely tuned standard, nor is its meaning susceptible to precise articulation. Instead, it is a fluid concept that can only be applied in context. *Ornelas v United States*, 517 US 690, ___; 117 S Ct 1657; 134 L Ed 2d 911, 918 (1996). The Michigan Supreme Court has recently articulated the proper standard of review in such cases:

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> Probable cause involves a determination of both the historical facts and whether the rule of law as applied to the facts is violated. As the Supreme Court recently observed in the context of reviewing a question of reasonable suspicion or probable cause under the Fourth Amendment, "as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal." *Ornelas v United States*, 517 US 690, ___; 116 S Ct 1657, 1663; 134 L Ed 2d 911 (1996). Because the inquiry before us concerns a question of law, the existence of probable cause, our review is de novo. [*Matthews v Blue Cross and Blue Shield of Michigan*, 456 Mich 365, 377; 572 NW2d 603 (1998).]

Here, the information provided in defendant's affidavit supported both the search warrant for plaintiff's residence and the warrant for her arrest. Plaintiff has not disputed any of the facts asserted in the affidavit; she only disputes whether those facts support a finding of probable cause. Thus, the trial court's decision below is not entitled to any special deference.

Plaintiff argues that, out of thirty-four averments in the affidavit, only two refer to her, and that the only evidence against her was the fact that she rented a car in Florida. She contends that this evidence was insufficient to support a finding of probable cause. We disagree. Reviewing defendant's affidavit, we conclude that it states facts justifying an inference that plaintiff was involved in a conspiracy to deliver cocaine.

The facts set forth in the affidavit can be summarized as follows: Plaintiff lives with one Geronimo Sanchez ("Geronimo")in Ecorse, Michigan. Geronimo and another man, Julio Rodriguez ("Rodriguez") often travel together to Florida to obtain cocaine to sell in Michigan. On September 1, 1991, Rodriguez and Geronimo were in Miami where they had just stolen three kilograms of cocaine. They sold one kilogram of cocaine in Florida, and Rodriguez planned to drive the other two kilograms back to Michigan in a rental car provided by Geronimo. On September 4, 1991, Rodriguez was arrested driving a car with Florida plates.[1] The car had been rented in Florida on September 1, 1991, in plaintiff's name, using her Ecorse address. The car rental agreement listed Julio Rodriguez as an additional driver. On the same day that Rodriguez was arrested in plaintiff's rental car, police found two kilograms of cocaine at Rodriguez's residence. Rodriguez was storing the cocaine for Geronimo. There was additional evidence that Geronimo had been involved in transactions involving approximately fourteen kilograms of cocaine in the months leading up to plaintiff's arrest.

The above facts are sufficient to establish probable cause to believe that plaintiff conspired to deliver more than 650 grams of cocaine.[2] The obvious inference to be drawn from the facts is that plaintiff conspired with Geronimo and Rodriguez to deliver the cocaine, and that she rented the car in furtherance of the conspiracy. Plaintiff's theory seems to be that there could have been an innocent reason for the car rental, and, therefore, that probable cause was lacking. However, the possibility of an innocent explanation does nothing to destroy probable cause. We have no doubt that the above facts warrant a person of reasonable prudence to believe that there was a conspiracy to deliver cocaine, and that plaintiff was part of that conspiracy. Because probable cause existed to support plaintiff's arrest, there was no civil rights violation and she cannot recover under 42 USC 1983. *Tope, supra* at 107.

Next, plaintiff argues that the search of her home was unreasonable because defendant brandished a gun and swore at plaintiff in front of her children. We again disagree. The question whether a search and seizure is unreasonable is analyzed under the Fourth Amendment. *Graham v Connor*, 490 US 386, 394; 109 S Ct 1865; 104 L Ed 2d 443 (1989); *People v Hanna*, 223 Mich App 466, 470; 567 NW2d 12 (1997), lv pending. The question is whether the officers' actions were "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The reasonableness of the force used must be reviewed from the perspective of a reasonable officer on the scene, not with 20/20 hindsight. *Graham, supra* at 395-397; *Hanna, supra* at 470.

A police officer may use reasonable force when making an arrest. *Brewer v Perrin*, 132 Mich App 520, 528; 349 NW2d 198 (1974). The measure of reasonable force is that which an ordinarily prudent and intelligent person, with the knowledge of the arresting officer, would have deemed necessary in that situation. *Id.* at 528. The use of handcuffs does not constitute unreasonable force. *Id.* at 529. See also *People v Zuccarini*, 172 Mich App 11, 14; 431 NW2d 446 (1988).

Here, defendant had a warrant to search for property related to narcotics activity and was aware that drug traffickers commonly keep weapons to protect their narcotic supplies. We believe that the Supreme Court's reasoning in *Michigan v Summers*, 452 US 692; 101 S Ct 2587; 69 L Ed 2d 340 (1981), is persuasive here:

> Although no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation. [*Id.* at 702-703.]

See also *DeSmet v Snyder*, 653 F Supp 797, (ED Wis, 1987) (holding that arresting officer's drawing gun and pointing it at plaintiff, in presence of plaintiff's five year old daughter was insufficient grounds for relief under 42 USC 1983). Under the circumstances of this case, we do not believe that defendant's use of a gun in front of plaintiff's children was a constitutional violation.

Plaintiff also argued that the defendant's verbal intimidation of her in front of her children was a violation of her Fourth Amendment rights. We disagree. Mere allegations of verbal abuse do not constitute a constitutional violation, and as a result, plaintiff does not have a claim under 42 USC 1983. *Guzinski v Hasselbach*, 920 F Supp 762, 764 n 1 (ED Mich, 1996); *Freeman v Trudell*, 497 F Supp 481, 482 (ED Mich, 1980). Because plaintiff made no allegations of any physical contact or injuries, and since defendant's use of handcuffs and his gun were objectively reasonable, plaintiff has not stated a claim under the Fourth Amendment.

Finally, plaintiff argues that defendant is not entitled to qualified immunity. However, since the undisputed facts show that defendant's conduct did not violate plaintiff's constitutional rights, we need not address this issue.

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Joseph B. Sullivan

[1] Julio was presumably arrested in Michigan. However, this information was not in the affidavit.

[2] Many of the facts in the affidavit were based on an informant's statements. However, as noted above, plaintiff does not dispute the accuracy of these facts. In addition, the specificity of the details provided by the informant, regarding the dates, and plaintiff's name and phone number, were sufficient to support a finding that the informant spoke from personal knowledge. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). Defendant also conducted an independent investigation that produced corroborating evidence and substantially verified the information supplied by the informant. *Id.* at 223. Under these circumstances, the informant's statements support a finding of probable cause.